itself, is the photostat of the application which is annexed?

Mr. Fennelly: Yes. I would think the policy is immaterial, and it seems to me the amount of expenditure—

The Court: I would think so myself.

Mr. Christy: The policy contains on the face of it certain information with regard to the type of policy and the premiums. I will restrict the offer to the front part, the large page.

The Court: Yes, all right. First page of 240.

Mr. Christy: First page, your Honor, and also what is the label on the back, which gives the policy number and the name of the person.

(934) The Court: All right.

240 for identification as modified, 240-A as you agree to modify it—

Mr. Christy: Yes, your Honor.

The Court: (Continuing) —and 240-B without modification may be received in evidence.

(Government's Exhibits 240, 240-A and 240-B received in evidence.)

Mr. Christy: Your Honor, from Government's Exhibit 240-A may I have permission to read?

The Court: You may read any part that is in evidence.

Mr. Christy: Very well, your Honor.

The Court: I take it you are interested in that question 8 on part 1 and the questions in part 2.

Mr. Christy: Question 5 in part 2 I shall read.

The Court: Very well.

Mr. Christy: On this application, Government's

Exhibit 240-A, which was the application for the insurance, Mrs. Costello was asked:

"From what source does the person to be insured derive means of support?"

and the answer is "Husband."

Mr. Fennelly: Would you read the date of it, (935) please?

Mr. Christy: July 9, 1940.

Q. Mr. Perry, Government's Exhibit 240-B is a record of the payments of premium on this policy, is that correct? A. It is.

Q. Will you tell us what the face amount of the policy was? A. $6,000.

Q. What was the annual premium? A. $522.60.

Q. Does Government's Exhibit 240-B indicate that premiums were paid from 1940 through 1949? A. It does.

Q. Does that exhibit also have the record of dividends declared by the company, declared by Prudential? A. It does.

Q. And does that record also indicate that these dividends were in some year applied against the annual premiums? A. They were.

Q. Now, Mr. Perry, can you tell us how much was paid as a premium in 1940? A. $522.60.

Q. 1941? A. $522.60.

Q. 1942? A. $500.52.

Q. 1943? A. $496.50.

Q. 1944? A. $492.60.

Q. 1945? A. $489.42.

Q. 1946? A. $488.52.

(936) Q. 1947? A. $493.86.

Q. 1948? A. $492.60.

Q. 1949? A. $492.60.

William A. Perry—for Government—Cross

Q. Has this policy matured? A. It matured in July of 1952.

Mr. Christy: Your Honor, may we substitute appropriately blocked-out photostats for these exhibits?

The Court: You may.

Cross Examination by Mr. Fennelly:

Q. Mr. Perry, did you testify before the grand jury that returned the indictment in this case? A. I did not.

Mr. Fennelly: That is all.

Mr. Christy: No further questions, your Honor.

The Court: Very well.

Mr. Christy: Just a minute, Mr. Perry.

Mr. Fennelly: Your Honor, might I read to the jury one part of that policy, too?

The Court: Oh, yes.

Mr. Fennelly: The policy is a 12-year policy, payable to the insured, if living, 12 years after date hereof or in case of prior death of the insured to Frank Costello, William Geigerman, Dudley Geigerman, Jr., Jessie Halbauer, Ruth Mehrman, husband, brother, nephew (937) and sisters, respectively, of the insured as may be living, beneficiary in equal shares.

Mr. Christy: Thank you, Mr. Perry.

(Witness excused.)

Mr. Christy: The Government calls Charles C. Lohse, Jr.

Charles C. Lohse, Jr.—for Government—Direct

CHARLES C. LOHSE, JR., called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Lohse, where do you live? A. At 52 7th Street, Valley Stream, Long Island.

Q. Where are you employed, sir? A. New York Life Insurance Company.

Q. How long have you been with New York Life Insurance Company? A. Thirty years.

Q. Are you the section head in the comptroller's department? A. I am.

Q. In that position do you have access to the policies and records kept by New York Life? A. Yes, I do.

Q. Are you familiar with those records? A. Yes.

Q. Mr. Lohse, did New York Life write an insurance policy for Mr. Costello? A. Yes, they did.

(938) Q. Frank Costello? A. They did.

Q. Have you the records pertaining to that policy? A. Yes, I do.

(Marked Government's Exhibits 241, 241-A, 241-B, 241-C marked for identification.)

Q. Mr. Lohse, I show you Government's Exhibit 241 for identification and ask you if that is the policy written by New York Life Insurance Company on the life of Frank Costello. A. Yes, it is.

Q. I show you Government's Exhibit 241-A and ask you what that is. A. That is our policy brief record.

Q. The policy brief record? A. That is right.

The Court: What is that second word? I don't get it.

Mr. Christy: Brief.

The Court: B-r-i-e-f?

The Witness: That is right.

Q. Now, referring back to Government's Exhibit 241 for identification, what is the number on that policy? A. It is policy No. 7634240.

Q. Referring to Government's Exhibit 241 for identification, does the number appear on the policy brief record? A. Yes, it does.

Q. Is it the same number, sir? A. The same policy number.

(939) Q. I show you Government's Exhibit 241-B for identification and ask you what that is. A. This is our premium card record under the same policy number.

Q. Does the name Costello also appear on that? A. Yes, it does.

Q. Does that contain a record of the payment of premiums? A. That is correct.

Q. I show you Government's Exhibit 241-C and ask you what that is. A. That is our dividend record on the same policy.

Q. And what number appears on that? A. 7634240.

Q. That same number appears on all four of those records, is that correct? A. That is correct, yes, sir.

Q. So they all relate to the same policy? A. Yes.

Q. Now, as to Government's Exhibit 241-A, B and C for identification, are those records kept in the regular course of New York Life Insurance Company's business? A. Yes, they are.

Q. And is it the regular course of their business to keep such records? A. Yes, it is.

Q. Now, as to Government's Exhibit 241, that is the original policy, is that in the hands of the (940) insured during the life of the policy? A. Yes, it is.

Q. And upon surrender, or upon the termination of the

policy, it goes back to the company; is that correct? A. Correct, yes.

Q. And at that time it becomes a record kept in the regular course of the insurance company's business? A. Correct.

Mr. Christy: Your Honor, at this time the Government offers Government's Exhibits 241, 241-A, B and C for identification, or only so much of them as covers the period from October '37, October 18, 1937, forward.

Mr. Fennelly: I object to Exhibit 241 as being irrelevant and immaterial. The policy and application are dated in 1922.

Mr. Christy: Your Honor, the Government will restrict its offer to the face of the policy here and what would be the label on the back which gives the number and the amount.

The Court: Very well. As so limited, the objection is overruled, and the policy may be received.

Mr. Fennelly: And on the other cards, do I understand the offer is limited to the—

The Court: From '37 forward.

Mr. Christy: October '37 forward, yes, your Honor.

(941) The Court: No objection?

Mr. Fennelly: No objection.

(Government's Exhibits 241, 241-A, B and C received in evidence.)

Q. Mr. Lohse, referring to Government's Exhibit 241 in evidence, will you tell us the face amount of that policy? A. The face amount is $15,000.

Q. And what type of policy was it? A. 20-year endowment policy.

Q. And it was to be paid up on what date? A. On June 13, 1942.

Q. And does that indicate what the semi-annual premium was? A. Yes, it does.

Q. How much was that, Mr. Lohse? A. $402.30.

Q. Now, referring to Government's Exhibit 241-A, does that give Mr. Frank Costello's address? A. His latest address given here, yes.

Q. What is that, sir? A. 115 Central Park West, New York City.

Q. Referring to Government's Exhibit 241-B in evidence, that is a record of the premium payments, is it not, sir? A. That is correct.

Q. And you have testified that the semi-annual premium was $402.30. A. That is right.

Q. Now, can you tell us how much was paid as premium (942) on this policy in the years 1938 through 1941? A. Well, there were two semi-annual premiums paid in each year of $402.30. That would be $804.60 a year.

Q. And that figure was paid in each of the years 1938, 1939, 1940 and 1941? A. That is correct.

Q. Does that card also indicate that there was a payment in 1942? A. Yes. There is one semi-annual premium paid in January, 1942.

Q. That was $402.30? A. That is correct.

Q. Does the New York Life Insurance Company pay dividends to its policy holders? A. Yes, they do.

Q. And can some of the insureds apply the dividends against the premiums and pay the net figure? A. They can, yes.

Q. And does Exhibit 241-C contain a record of dividends on this policy? A. Yes, it does.

Q. Now, referring to Government's Exhibit 241-C in evidence, can you tell us if there were ever dividends declared by New York Life Insurance Company which Frank

Costello applied against his premium payments? A. There is no evidence of that, no.

Q. These dividends were left with the company except for one year, is that correct? A. Yes, that is correct.

(943) Q. What year was that? A. In 1939 the dividends were withdrawn.

Q. But in 1938, 1940, 1941 and 1942 there were no dividend payments, is that correct? A. That is correct.

Q. Now, you say there was a dividend paid in 1939, is that correct, Mr. Lohse? A. That is right, yes.

Q. Do you have the check for that dividend? A. Yes, I do.

Q. May I have it, sir?

(Witness hands to Mr. Christy.)

(Marked Government's Exhibit 241-D for identification.)

Q. I show you Government's Exhibit 241-D and I ask you if that is the check which was issued to Frank Costello for the dividend in 1939 which you have just told us about. A. That is correct.

Q. Is there an endorsement on the back of that? Don't tell me what it is. A. Yes, there is.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 241-D for identification in evidence.

Mr. Fennelly: No objection.

(944) (Government's Exhibit 241-D for identification received in evidence.)

Q. Looking at Government's Exhibit 241-D in evidence, Mr. Lohse, will you tell us what the amount of that check is? A. The check is $474.78.

Q. And the date, sir? A. July 18, 1939.

Q. And you testified that that was the check that was issued to Mr. Costello in payment of a dividend? A. That is correct.

Q. Now, Mr. Lohse, can you tell us if there was a loan outstanding on this policy during the years 1938 through 1942? A. Yes, there was.

Q. Was that loan made prior to the year 1937? A. Yes, it was.

Q. Was there any additional loan taken out on that policy between the years 1937 and 1942? A. Not an additional cash loan, no.

Q. Do your records there indicate the date of that loan? A. The original loan was made on October 17, 1930.

Q. 1930? A. That is correct.

Q. Were there additional loans made? A. Not cash loans, no.

Q. That was the only cash loan? A. That is right.

Q. Did Frank Costello pay the interest on this (945) outstanding loan during the years 1937 through 1942? A. With the exception of one year, the unpaid interest was added to the outstanding indebtedness.

Q. So, in fact, he did not pay the interest except for the one year? A. That is correct.

Q. And that year was? A. 1939.

Q. It was the same year that the dividend was declared? A. That is correct.

Q. Mr. Lohse, this policy has matured, has it not? A. Yes, it has.

Q. And upon maturity, the policy was surrendered, is that correct? A. That is correct.

Q. And a payment was made to Frank Costello? A. That is right, yes.

Q. Have you got the check which was issued to Frank Costello upon the surrendering of this policy? A. Yes, I have.

Q. Do you also have, sir, a memorandum which details how the figure on this check was arrived at? A. Yes, I do.

Q. May I have both of those, sir?

(Witness hands.)

(Government's Exhibit 241-E and 241-F marked for identification.)

Q. Mr. Lohse, I show you Government's Exhibit (946) 241-F and I ask you if that is the check that was issued to Frank Costello upon the surrendering of his policy. A. That is correct.

Q. And under what date is that check? A. June 13, 1942.

Q. I show you Government's Exhibit 241-E for identification and I ask you if that is a memorandum showing the figures upon which the dividend check was computed. A. It is not a dividend check.

Q. The check issued upon the maturity of the policy. I beg your pardon, sir. A. That is correct, yes.

Q. It does? A. Yes, it does.

Mr. Christy: Your Honor, the Government offers Government's Exhibits 241-E and 241-F for identification in evidence.

The Court: Would you let me see 241-D, please?

Mr. Christy: 241-D?

The Court: D. It is already in. Here it is, here. Thank you.

Mr. Fennelly: No objection.

(Marked Government's Exhibits 241-E and 241-F in evidence.)

Charles C. Lohse, Jr.—for Government—Direct

Q. Mr. Lohse, referring to Government's Exhibit (947) 241-F, to whom is the check payable? A. Made payable to the order of Frank Costello.

Q. What date, sir? A. June 13, 1942.

Q. And the amount? A. $8,091.18.

Q. Referring to Government's Exhibit 241-E in evidence, I believe you have identified that as a memorandum on which the maturity check was computed. A. Correct.

Q. Figures on which the maturity check was computed. Referring to that memorandum, will you tell us the matured endowment plus the dividend for 1942 plus the accumulated dividends? And what is that figure? A. Total amount was $15,531.99.

Q. From that figure you would have to subtract the outstanding loan, is that correct? A. That is correct.

Q. And the interest that was due on that loan, the accumulated interest? A. Correct.

Q. So according to that memorandum the total due Frank Costello was how much? A. Was $8,000—the net amount due?

Q. That is right. A. Was $8,091.18.

Q. The amount of the check which was issued to him? A. That is correct.

Q. And this check, Government's Exhibit 241-F in (948) evidence, was issued to Frank Costello in final payment of that policy, is that correct? A. That is correct.

Q. Referring to Government's Exhibit 241-D in evidence and 241-F in evidence, the two checks, what endorsements appear on the back of that check—of those checks? A. The first endorsement is Frank Costello. Second endorsement is Loretta B. Costello.

Q. And that is on both checks, sir? A. On both checks.

Q. Referring to Government's Exhibit 241-E in evidence, does that indicate the policy loan in 1942 just before payment? A. Yes, it does.

Q. What is that figure, sir? A. $7,019.63.

Q. And that is the policy loan, the balance of the loan outstanding at that date? A. That is correct.

The Court: What is the date again?

Mr. Christy: The date on the memorandum is June 3, 1942.

Q. Does that also indicate the interest or policy liens due on 6-13-42, June 13, 1942? A. Yes, it does.

Q. What is that figure, sir? A. $421.18.

Q. So the total of those two figures would be (949) what Frank Costello in effect owed the New York Life Insurance Company? A. That is correct.

Q. And the total of those two figures was deducted from the matured endowment plus the accumulated dividends and 1942 dividend to arive at the figure which was paid to him upon the settlement of the policy? A. That is correct.

Q. Is that correct? A. Yes, it is.

Mr. Christy: Your Honor, may we substitute appropriate blocked-out photostats for these records?

The Court: Yes.

Mr. Christy: I have no further questions.

Cross Examination by Mr. Fennelly:

Q. Mr. Lohse, did you testify before the grand jury that returned the indictment in this case? A. No, I did not.

Q. When you say that, in answer to one—two of the last questions that the amount that had been borrowed on the policy was in effect an amount that Mr. Costello owed you, if a policy is paid up, say a $10,000 policy and it is paid up, $5,000 and one of your policyholders draws that

amount, he doesn't owe you anything, does he? A. In effect, he does. It is an indebtedness against what we owe him.

(950) Q. But I sam saying, if the surrender value of the policy, say you have a $20,000 policy and it is paid up as of a certain date, $5,000, and a policyholder withdraws that much money from you he, in fact, doesn't owe you anything, does he? A. You are speaking of a paid-up policy or a matured policy? This is a matured policy, not paid up.

Q. Either one. I don't think it makes any difference. A. Well, a matured policy it does because he receives the amount that we owe him less any indebtedness which he owes on the policy.

Q. My point is, he doesn't actually owe you anything, does he? A. That is a technical question that is pretty hard to answer.

Q. I wouldn't think it was so technical.

Mr. Christy: I submit this is an exercise in semantics.

The Court: The witness says it is hard for him, and that is enough.

The Witness: I think that is rather a technical question.

Mr. Fennelly: The Prosecutor asked the question, which I think was incorrect.

Q. Would you take this exhibit? and did I understand (951) Exhibit 241-D, that is the check for $474.78, that was an accumulation of dividends on the policy over some years? A. That is correct.

Q. What was the amount of the dividend earned on the policy in the year 1939, that is, up until July 17th—18th, the date of the check? A. The amount earned in 1939 was $198.90.

Q. What was the amount earned in 1938? A. $191.70.

Q. And what was the amount earned in 1937 between October 17th and the end of 1937? A. That I can't tell you. We go by due date of the policy and we don't have that broken down by any dates in between anniversaries.

Mr. Fennelly: That is all.

The Court: Have you any further questions, Mr. Christy?

Mr. Christy: I have no further questions, your Honor.

The Court: All right, Mr. Lohse.

Mr. Christy: (To the witness) Just let me substitute these.

Thank you, Mr. Lohse.

The Witness: All right; you don't need me any further?

(952) Mr. Christy: I do not, sir.

(Witness excused.)

Mr. Christy: The Government calls Walter Schneider.

WALTER SCHNEIDER, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Schneider, where do you live? A. 3553 82nd Street, Jackson Heights.

Q. Where do you work, sir? A. At 101 Park Avenue.

Q. What is the name of the company? A. Walter Schneider Association, Incorporated.

Q. Are you the president of Walter Schneider Associates? A. That is correct.

Q. How long have you been with Walter Schneider Associates? A. Since the inception, approximately 1930.

Q. What business is Walter Schneider Associates in? A. Painting contractors.

Q. Has Walter Schneider Associates ever done work for Frank Costello? A. Yes, sir.

Q. In your position as president are you familiar with the books and records of Walter Schneider Associates? A. I am.

Q. Do you have access to them? A. That is right.

(953) Q. Have you brought the ledger cards relating to the work done for Frank Costello? A. I have.

Q. May I have them, sir? A. (Handing papers to Mr. Christy.)

Mr. Christy: Your Honor, may we mark this as one exhibit?

The Court: This group of sheets?

Mr. Christy: Yes, to save a little time.

The Court: Yes.

(Marked Government's Exhibit 242 for identification.)

The Court: How many sheets?

Mr. Christy: May the record indicate there are 6 sheets in Government's Exhibit 242 for identification?

Q. Mr. Schneider, I hand you Government's Exhibit 242 for identification and ask you what they are. A. They are the ledger sheets out of our general ledger showing the invoices and payments of these invoices made by Mr. Costello.

Q. What is the date on the first page, sir? A. 1939.

Q. And on the last page? A. 1949.

Q. Mr. Schneider, are these ledger sheets which you have identified records kept in the regular course of your business? A. That is right.

(954) Q. And is it the regular course of your business to keep such records? A. That is correct.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 242 for identification in evidence.

The Court: It is almost lunch time. Might want a little time to look at those records. Six sheets are there.

Mr. Christy: Your Honor, they are very simple records.

The Court: Well, that is always a matter of individual judgment. Sometimes the man who is representing a defendant does not think the Prosecutor's exhibits are so simple.

Mr. Christy: I think we could get through by one o'clock.

The Court: I was going to make an observation which I had better withhold, but I hope you are successful and we will wait until one.

(A pause.)

The Court: I hope, Mr. Fennelly, you are not going to take too long just to make me look good on my estimate here.

Mr. Fennelly: No, but I would think your Honor's judgment is correct. There are about 8 sheets here that I have to look at.

(955) Mr. Christy: There is one entry on each sheet.

Mr. Fennelly: I doubt very much—

Mr. Christy: Mr. Schneider has his own business. He has been down here this morning. I thought we might accommodate him, if possible.

The Court: Glad to, if we can.

(A pause.)

Mr. Fennelly: May I examine the witness preliminarily?

The Court: Yes.

Preliminary Cross Examination by Mr. Fennelly:

Q. Did you ever see Mr. Costello in your life? A. I saw him yesterday afternoon out in the corridor. That was the first time. Yesterday morning, rather.

Q. You never saw him in connection with any of the business, work that you said you did for him? A. That is correct.

Q. And he never ordered you to do any work, did he? A. Not personally, no.

Q. So when you testified in answer to the Prosecutor's question whether you did work for Mr. Costello, did anybody tell you to say that? A. No.

Q. In fact, Mr. Costello never ordered you to do any work, did he? A. He ordered my superintendent to do (956) the work.

Q. Mr. Costello? A. Mrs. Costello, but in the individual case I would have to check back.

Q. As far as you are concerned were you present? A. No.

Q. When any instructions were given?

Mr. Fennelly: I move to strike out the witness's

answer, your Honor, that he said Mr. Costello gave instructions.

The Court: I will let it stand.

Mr. Fennelly: I object to the accounts as irrelevant and immaterial, all of them. Some of them are in the name of Mr. Costello, some of them in the name of Mrs. Costello.

The Court: Overruled.

(Marked Government's Exhibit 242 in evidence.)

Direct Examination by Mr. Christy (Continued):

Q. I show you Government's Exhibit 242 in evidence. Now, referring to the first sheet will you tell us the amount that was paid on that sheet? A. $28.

Q. In 1939? A. '38. 1938. Was paid in 1939.

Q. Paid in 1939. Next sheet?

The Court: I suggest, if you want to save time, Mr. Christy, with these being in evidence, you may read them to the jury at any time you wish, if (957) you want to save the time of the witness.

Mr. Christy: Very well.

The Court: Why don't you do that?

Mr. Christy: The payments in 1939: $28 and $80, for a total of $108.

Year 1946, two payments, $107 and $15, for a total of $122.

I withdraw part of that. That was a payment in 1946, $122. And in the year 1947, $92.

In the year 1948, $506.

And the year 1949, two payments, $130 and $18, for a total of $148.

Walter Schneider—for Government—Cross.

Q. Mr. Schneider, does the work for which you were paid, and the payments shown on these sheets, was that work done at the Costello apartment at 115 Central Park West? A. That is correct.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. I did not.

Q. Looking at Government's Exhibit 242, on the first sheet, 1939, did you take the order for that work? A. My superintendent did.

Q. What is your superintendent's name? A. George Fent.

Q. Where does he live? (958) A. He lives in Hyde Park. I don't know his address offhand.

Q. In Long Island? A. That is right.

Q. Is he still with you? A. That is right.

Q. And on the second sheet, did you take the order for that work? A. No. Same man.

Q. Your superintendent? A. That is right.

Q. That sheet states Mrs. Costello? A. Yes.

Q. On the third sheet, 1946, is the entry on it—you didn't take the order for that? A. No, sir.

Q. And the next sheet, 1947, did you take the order for that? A. Same thing.

Q. You didn't take the order for any of them? A. No.

Q. Did your superintendent take the orders for all of them? A. That is correct.

Q. Who made the entries on these sheets, Exhibit 242? A. My auditors.

Q. Your auditors? A. That is right.

Q. What are their names? A. Well, I would have to check back the individuals for each sheet. I couldn't just offhand say, the various years.

Q. You mean you had different auditors for different years? A. Same group, but some boys left and others came in.

(959) Q. What is the name of the company that audited it? A. Mr. Natchez, who is comptroller for Finlay Straus, he is, I think, auditor for, and he has got three of his auditors there that work on the books.

Q. Where is his office? A. He is with Finlay Straus on 14th Street.

The Court: You mean he is employed by them?

The Witness: Yes, and he does—

The Court: He does this work in the evenings?

The Witness: (Continuing)—this work in the evening on the side.

The Court: Have you any further questions?

Mr. Christy: I have no further questions.

May I substitute photostats for these, your Honor?

The Court: Yes.

Ladies and gentlemen, we are excused, too.

Remember the instructions. Enjoy your lunch and don't bother talking about the case or even thinking about it until it is finally submitted to you.

(Recess until 2.15 p.m.)

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(960) AFTERNOON SESSION

(Jury in box.)

Mr. Pierpoint: The Government calls John F. Shields.

John F. Shields—for Government—Direct

JOHN F. SHIELDS, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. Shields, will you keep your voice up so that the last juror in the box can hear you? A. Yes, sir.

Q. What is your business, Mr. Shields? A. Hardware and plumbing, sheet metal work.

Q. And what is the name of your company? A. Shields Brothers.

Q. And what position do you hold there? A. I own the business.

Q. Are you familiar with the books and records? A. Yes, sir.

Q. Have you brought with you the books and records in connection with the account of Frank Costello? A. Yes, sir.

(Marked Government's Exhibit 243 for identification.)

(961) Q. Mr. Shields, I show you Government's Exhibit 243 for identification. Will you tell us what that is? A. This is a ledger sheet out of the ledger. This is the purchases made each month.

Q. This is the ledger sheet? A. Yes, sir.

Q. Showing the account of Frank Costello? A. Yes, sir.

Q. And is this record kept in the regular course of business? A. Yes, sir.

Q. Is it the regular course of your business to keep this record? A. Yes, sir.

Q. And this record shows the account of Frank Costello and the payments on that account? A. Yes, sir.

Q. And it runs from the year 1945 through the year 1948 or through the year 1949? A. Yes.

John F. Shields—for Government—Direct

Mr. Pierpoint: The Government offers Government's Exhibit 243.

Mr. Fennelly: No objection through 1949.

Mr. Pierpoint: That is what the offer is confined to.

The Clerk: No objection?

The Court: No objection. It may be marked in evidence.

(Government's Exhibit 243 received in evidence.)

Q. Mr. Shields, I show you Government's Exhibit (962) 243 in evidence. Will you read the top line, the name of the customer, please? A. Frank Costello. We got here the initial.

Q. Would you keep your voice up? A. F. Costello.

Q. And the address? A. 5 Barkerspoint Road, Port Washington, Sands Point.

Q. Now, starting with the year 1945, will you read the amounts paid in each year on that account? A. 1945, May 31st, you got a bill for $12.24.

Q. Just the total for the year. A. Oh, the year? For the year is $58.08.

Q. Would you check that again? A. $58.07.

Q. $58.07. A. Yes, sir.

Q. And for 1946? A. 1946, $103.52.

Q. For 1947? A. $204.96.

Q. For 1948? A. $760.76.

Q. And 1949? A. 1949 was $78.69.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. You mean to testify before, here?

Q. Yes. A. No, sir.

Q. Before the grand jury that returned the indictment. (963) A. No, sir, I wasn't here before.

Mr. Fennelly: That is all.

The Court: All right.

Mr. Pierpoint: I request permission to substitute a photostat, your Honor.

The Court: You may.

You may step down, Mr. Shields. Thank you.

Mr. Pierpoint: Thank you, Mr. Shields.

(Witness excused.)

Mr. Pierpoint: The Government calls Benjamin Tyson.

BENJAMIN TYSON, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. Tyson, will you keep your voice up, please, so the last juror can hear you? What is your business, Mr. Tyson? A. Repair shop, lawnmowers, bicycles and so forth.

Q. What is the name of your company? A. Tyson's Repair Shop and Don's Bike Shop.

Q. Are you the owner of that business? A. That is right.

Q. Are you familiar with the books and records (964) maintained for the accounts of customers? A. I am.

Q. Have you brought with you certain work orders reflecting the account of Frank Costello? A. I have.

Q. May I see them?

(Witness hands papers to Mr. Pierpoint.)

(Marked Government's Exhibits 244 and 244-A for identification.)

Q. Mr. Tyson, I show you Government's Exhibit 244 for identification and Government's Exhibit 244-A for identification, and I ask you if these are repair orders for work done by your company. A. They are.

Q. And do they show the amounts paid for that work? A. They do.

Mr. Pierpoint: The Government offers Government's Exhibits 244 and 244-A for identification in evidence.

Mr. Fennelly: No objection.

Mr. Pierpoint: There is no objection.

(Government's Exhibits 244 and 244-A received in evidence.)

Q. Mr. Tyson, I show you Government's Exhibit 244 in evidence and ask you to read the name and address that this card refers to. A. The name is Frank Costello and the address is Sands Point.

(965) Q. What is the amount that was paid on this card?

The Court: This card being which?

Mr. Pierpoint: Government's Exhibit 244.

A. $23.35.

Q. On what date was it paid? A. There is no date on here on which the—date it was paid.

Q. Can you state which month it was paid in and what year it was paid in? A. According to the way that this here obligation was handled, and this one, there wasn't too much lapse of time between January—June 9th and the date the bill was paid, not over, I don't believe—

Q. Can you say on what date the bill was rendered? A. Bill was rendered June 10th.

Q. In what year? A. 1949.

Q. I show you Government's Exhibit 244-A, and this refers to the same account, is that correct? A. That is correct.

Q. Will you state the amount paid on that account? A. The amount paid—amount of the bill was $41.50 and paid in full on August 8, 1949.

Q. Have you added up those two amounts, Mr. Tyson? A. The first item of $41.50 and the second item of $23.35 totals $64.85.

(966) *Cross Examination by Mr. Fennelly:*

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Q. And have you ever seen Mr. Costello? A. Yes, sir.

Q. In your shop? A. Yes, sir.

Q. And who ordered the work done on these two items, do you recall? A. Mrs. Costello.

Q. Mrs.? A. That is right.

Q. And Mrs. paid you, didn't she? A. That's right.

Mr. Pierpoint: No further questions.

I request permission to substitute photostats, your Honor.

The Court: You may.

Mr. Pierpoint: Thank you, Mr. Tyson.

The Witness: Is that all?

The Court: Yes, you may go.

(Witness excused.)

Mr. Pierpoint: The Government calls Mr. William Nissly.

C. WILLIAM NISSLY, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

(967) Q. Mr. Nissly, will you keep your voice up so the last juror can hear you? What is your business? A. Awnings.

Q. What is the name of your company? A. Perma-Vent, Incorporated.

Q. What position do you hold with the company? A. I am president of the company.

Q. Are you familiar with the books and records maintained by your company to reflect accounts of the purchasers? A. Yes.

Q. Have you brought with you a duplicate bill sent to L. Costello? A. Yes, sir, I have.

Q. May I have it? A. (Handing paper to Mr. Pierpoint.)

(Marked Government's Exhibit 245 for identification.)

Q. Mr. Nissly, I show you Government's Exhibit 245 for identification and ask you to tell me what that is. A. This is a copy of the invoice sent out showing payment due on an awning that was installed at this address.

Q. Does it reflect that the bill was paid? A. Yes, it is marked paid and dated with our stamp.

Q. Is this a record kept by your company in the usual course of business? A. Yes, sir, it is.

(968) Q. Is it the usual course of your business to keep such a record? A. Yes, sir.

Mr. Pierpoint: Government offers Government's Exhibit 245 for identification.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Overruled.

Mr. Fennelly: You don't offer this (indicating)?

Mr. Pierpoint: No, I don't.

Mr. Fennelly: The pencil notations on that, I understand, are not offered.

The Court: That is right.

(Marked Government's Exhibit 245 in evidence.)

Q. Mr. Nissly, I show you Government's Exhibit 245 in evidence and I will ask you to read the name shown at the top. A. L. Costello.

Q. And the address? A. Barkerspoint Road—5 Barkers Point Road, Sands Point.

Q. And the amount? A. $32.90.

Q. And the date on which it was paid? A. September 15th.

Q. In what year? A. 1947.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that (969) returned the indictment in this case? A. No, sir.

Mr. Fennelly: That is all.

Mr. Pierpoint: May I substitute a photostat, your Honor?

The Court: You may.

Mr. Pierpoint: Thank you, Mr. Nissly.

(Witness excused.)

Mr. Pierpoint: The Government calls Mr. Moe Stravitz.

MOE STRAVITZ, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. Stravitz, will you keep your voice up so that the last juror in the box can hear you? A. Yes, sir.

Q. What is your business, Mr. Stravitz? A. Venetian blinds and glass.

Q. And what is the name of your company? A. Sun Dial Venetian Blind & Glass Company.

Q. What position do you hold there? A. Foreman.

Q. Are you familiar with the books and records maintained by the company? A. Yes.

Q. Have you brought with you a ledger book showing (970) accounts with customers and the amounts paid on those accounts? A. Yes.

Q. May I have them, please?

(Witness hands.)

The Court: Mark the book for identification, and any page that you want to put in we will mark that with a subletter.

Mr. Pierpoint: All right, your Honor.

Will you mark page 51, the first page?

The Court: Mark the book first 246 for identification, and then whatever pages you want marked will be 246-A, B, C, and so on.

(Marked Government's Exhibit 246 for identification.)

Mr. Pierpoint: Will you mark page 51?

(Marked Government's Exhibit 246-A for identification.)

Mr. Pierpoint: Page 58.

(Marked Government's Exhibit 246-B for identification.)

Mr. Pierpoint: Page 67 as C.

(Marked Government's Exhibit 246-C for identification.)

Mr. Pierpoint: Page 68 as D.

(Marked Government's Exhibit 246-D for identification.)

(971) Mr. Pierpoint: Page 93 as E.

(Marked Government's Exhibit 246-E for identification.)

Q. Now, Mr. Stravitz, I show you Government's Exhibit 246 for identification and I will ask you if this is a ledger kept by you, kept by your company reflecting the accounts

of customers and the amounts paid on those accounts? A. Yes.

Q. And is it a record kept by your company in the regular course of its business? A. Yes.

Q. And is it the regular course of your company's business to keep that record? A. Yes.

Mr. Pierpoint: Your Honor, I offer Government's Exhibits 246-A through E.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: In whose name is the account?

Mr. Pierpoint: Costello.

The Court: Just Costello?

Mr. Pierpoint: Yes, your Honor.

The Court: All right, overruled.

(Government's Exhibits 246-A through 246-E for identification received in evidence.)

The Court: Where was the work done?

Mr. Pierpoint: 115 Central Park West.

(972) Q. Now, Mr. Stravitz, I show you Government's Exhibit 246-A in evidence and I will ask you to read on that page the date, and in the left-hand column being the 16th—or, first of all, read me at the top of the page the date shown at the top of the page. A. November, 1948.

Q. And the line where my finger indicates on Government's Exhibit 246-A. A. The 16th.

Q. The name? A. Costello.

Q. And the address? A. 115 Central Park West.

Q. And the amount paid? A. $44.

Q. And the date? A. November 19th.

Q. That is November 19, 1948? A. 1948.

Q. Referring now to Government's Exhibit 246-B, Mr. Stravitz, would you read the date at the top of that page? A. December, 1948.

Q. And reading where my finger indicates, the name. A. Costello.

Q. And address? A. 115 Central Park West.

Q. And the amount paid? A. $50.

Q. The date paid? A. December 15, 1948.

Q. That makes a total of $94 in the year 1948, is that correct? A. That is right.

Q. Referring now, Mr. Stravitz, to Government's Exhibit 246—

(973) The Court: C.

Q. —246-C, would you read the date at the top of the page? A. March, 1949.

Q. And where my finger indicates, the name. A. Costello.

Q. The address? A. 115 Central Park West.

Q. The amount? A. $134.80.

Q. And the amount paid, I mean the date paid? A. March 24, 1949.

Q. Referring now to Government's Exhibit 246-D, the date at the top of the page. A. March, 1949.

Q. And the name where my finger indicates? A. Costello.

Q. The address? A. 115 Central Park West.

Q. The amount? A. $3.50.

Q. And the date paid? A. March 4, 1949.

Q. Is that March or April, Mr. Stravitz? A. I am sorry, that is April 4th.

Q. Referring now to Government's Exhibit 246-E, the date at the top of the page? A. November, 1949.

Q. The name? A. Costello.

Q. There are, I believe, initials before that name. A. L. B. Costello.

Q. And the address? A. 115 Central Park West.

Q. The amount? A. $2.

(974) Q. And the date paid? A. November 14, 1949.

Q. Now, Mr. Stravitz, have you made a computation of the total amount paid in 1949, as shown on Government's Exhibits 246-C, D and E? A. Yes. $140.30.

Mr. Pierpoint: No further questions.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. Pardon me?

Q. I say, did you testify before the grand jury that returned the indictment in this case? A. No.

Q. And wasn't it Mrs. Costello who ordered this work, or whatever it was, about these blinds? A. Yes.

Q. And it was Mrs. Costello who paid you, wasn't it? A. Well, we received a check by mail and I never looked at the name.

Q. You never saw Mr. Costello in your life, did you? A. No.

Mr. Pierpoint: May we substitute photostats, your Honor, for the pages offered in evidence?

The Court: You may.

Mr. Pierpoint: Thank you, Mr. Stravitz.

(Witness excused.)

Mr. Pierpoint: The Government calls Mr. John (975) H. Bray.

John H. Bray—for Government—Direct

JOHN H. BRAY, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

The Court: Will you keep your voice up good and loud so the last juror can hear you, Mr. Bray?

Q. Mr. Bray, what is your business? A. Pardon?
Q. What is your business? A. Furniture and floor covering.
Q. What is the name of your company? A. Bray's Furniture Store.
Q. What position do you hold there? A. I am the owner.
Q. Have you brought with you, Mr. Bray, a record showing accounts of customers and the amounts paid on such accounts? A. I have.
Q. May I have it, please?

(Witness hands book to Mr. Pierpoint.)

Mr. Pierpoint: Mark the book and then the page.

(Book marked Government's Exhibit 247 for identification; page 43 thereof marked Government's Exhibit 247-A for identification.)

(976) The Court: What page number?
Mr. Pierpoint: Page 43.

Q. Mr. Bray, I show you Government's Exhibit 247 for identification and ask you if you will tell me what it is. A. This is the entry of a linoleum job.
Q. That is, Government's Exhibit—

The Court: 247 is the ledger in which you keep

a record of your customers and what they order and what they pay?

The Witness: That is right.

The Court: Let us get to page 43.

Q. This is a book kept in the regular course of business? A. That is right.

Q. And it is the regular course of your business to keep the book? A. That is right.

Mr. Pierpoint: The Government offers Exhibit 247-A for identification in evidence.

Mr. Fennelly: I object to it as immaterial and irrelevant.

The Court: This item here (indicating)?

Mr. Fennelly: Yes, that is correct.

The Court: Overruled.

(Marked Government's Exhibit 247-A in evidence.)

Q. Mr. Bray, Government's Exhibit 247-A is a page from your day book; that is correct? A. That is right.

(977) Q. What is the date appearing at the top of the column? A. 8-3-47.

Q. Are you sure that is '47 or is it '49? A. No, it is '49. Excuse me. I am sorry.

Q. Reading where my finger is, will you read from the book? A. "Costello job."

Q. And what was the amount paid? A. $150.

Q. Can you state approximately when that amount was paid? A. It was paid in September, sir.

Q. September, what year? A. 1949.

The Court: Where was the work done?

The Witness: At Barkerspoint Road in Sands Point.

The Court: What is the amount, again?

Mr. Pierpoint: $150.

The Court: All right.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the Grand Jury that returned the indictment in this case? A. No, sir.

Q. Did Mrs. Costello order the work done? A. Yes, sir.

Q. Mrs. Costello paid you? A. Well, the check was received by mail.

Q. I notice everything on the page up until this word "Costello" is in pencil. Was that changed to ink? (978) A. No, sir.

Q. And out in the margin, or alongside of it, there is a pencil notation. What is that, "approximate date"? A. Yes, when we estimated the job.

Mr. Pierpoint: May I substitute a photostat, your Honor?

The Court: You may.

Mr. Pierpoint: Thank you, Mr. Bray.

You may go.

(Witness excused.)

Mr. Pierpoint: The Government calls Lawrence Bock.

Lawrence P. Bock—for Government—Direct

LAWRENCE P. BOCK, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. Bock, will you keep your voice up so the last juror in the box can hear you? A. Yes.

Q. What is your business? A. Music business.

Q. What does that entail? A. Running a music store.

Q. Do you do anything else? A. Do piano selling and servicing.

Q. What is your position with the music company? A. I am the owner.

(979) Q. Are you familiar with the books and records maintained by the business? A. Yes, sir, I am.

Q. Have you brought with you a customer's card showing payments made for the account of Frank Costello? A. Yes, I have.

(Marked Government's Exhibit 248 for identification.)

Q. Mr. Bock, I show you Government's Exhibit 248 for identification and ask you if this is a record showing an account with a customer and the amount paid on that account. A. Yes, this is the—

Q. Is it such a record? A. Yes, it is.

Mr. Pierpoint: Government offers Exhibit 248 for identification, the front of the card only.

Mr. Fennelly: I object, your Honor. I think that only the amount should be put in evidence, payments.

Mr. Pierpoint: I offered only the front of the card.

The Court: I don't see what the rest of it has to do with anything in this case, but I don't think it is too important.

Mr. Pierpoint: No; I am only interested in the two payments.

The Court: The objection is overruled.

(980) (Government's Exhibit 248 for identification received in evidence.)

Q. Mr. Bock, I think I forgot to ask you the name of your company. A. Bock Music Company.

Q. I show you Government's Exhibit 248 in evidence, and the name at the top is what? A. Costello, Frank.

Q. And the address? A. 5 Barkerspoint Road.

Q. And there was a payment on June 13, 1944, of how much? A. $14.

Q. And a payment on August 12, 1948, of how much? A. $10.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, I did not.

Q. And did Mrs. Costello order the work that you did? A. I am not sure about that. I think she did.

Q. And she paid you? A. Yes.

Mr. Pierpoint: May I substitute a photostat, your Honor?

The Court: Yes, you may.

Mr. Pierpoint: Thank you, Mr. Bock.

(Witness excused.)

Mr. Pierpoint: The Government calls Kenneth W. Lent.

Kenneth W. Lent—for Government—Direct

(981) KENNETH W. LENT, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. Lent, will you keep your voice up so that the jury can all hear you? What is your business, Mr. Lent? A. I am in the fence business.

Q. What is the name of your company? A. Anchor Post Fence Company.

Q. What position do you hold? A. Branch manager.

Q. At what branch? A. Long Island.

Q. And are you familiar with the books and records maintained by your branch? A. Yes, sir.

Q. Have you brought with you three sales records showing sales to Mrs. Frank Costello? A. Yes, I have.

Q. Could I have them?

(Witness hands to Mr. Pierpoint.)

(Marked Government's Exhibits 249, 249-A and 249-B for identification.)

Q. Mr. Lent, I show you Government's Exhibits 249, 249-A and 249-B for identification and ask you if these are sales records showing accounts of purchases and the amounts paid on those accounts. A. They are.

Q. And are they records kept by your company in the (982) regular course of business? A. They are.

Q. And is it the regular course of business to keep these records? A. They are.

Mr. Pierpoint: The Government offers 249, 249-A and 249-B.

Kenneth W. Lent—for Government—Cross

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibits 249, 249-A and 249-B for identification received in evidence.)

Q. I show you Government's Exhibit 249-B. The name at the top is Mrs. Frank Costello, is that correct? A. That is right.

Q. And the amount paid? Would you read the amount paid, sir? A. Total $204.60. $50 was paid in cash and the balance was paid on 5-23-47.

Q. Would you check your amount again? A. $204.80.

Q. $204.80. A. And 80 cents; that is right.

Q. That was paid on May 23, 1947? A. That is correct.

Q. On Government's Exhibit 249-A in evidence, would you read the amount paid? A. Total paid $233.80.

Q. And on what date? A. June 24, 1947.

Q. Have you totaled those two amounts paid in 1947? (983) Do you have the total of those two amounts? A. No, I don't.

Q. Would you check and see if they come to $438.60.

The Court: Well, they do. Let's get along.

A. Yes.

Q. And Government's Exhibit 249 in evidence, the amount paid? A. One hundred and twenty—$129.70, paid 8-18-1948.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, I didn't.

Mr. Fennelly: That is all.

Mr. Pierpoint: May I substitute photostats, your Honor?

The Court: You may.

Mr. Pierpoint: Thank you, Mr. Lent.

(Witness excused.)

Mr. Pierpoint: The Government calls David Alper.

DAVID ALPER, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. Alper, what is your business? A. Hardware, housewares.

(984) Q. What is the name of your store? A. Alper's Hardware.

Q. Have you brought with you a record showing an account with Frank Costello? A. Yes.

Q. May I have it?

(Witness hands to Mr. Pierpoint.)

(Marked Government's Exhibit 250 for identification.)

Q. Mr. Alper, I show you Government's Exhibit 250 for identification and ask you if it is a ledger sheet showing an account for F. Costello, Sands Point, Long Island, in the year 1949. A. Yes.

Q. And is this a record kept in the regular course of business by your company? A. It is.

Q. And is it the regular course of your company's business to keep this record? A. Yes.

Mr. Pierpoint: The Government offers 250 for identification only as pertains to the year 1949.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibit 250 for identification received in evidence.)

Q. Mr. Alper, I show you Government's Exhibit 250 and ask you if you 'll tell me the amount paid on this (985) account in the name of F. Costello, Sands Point, in the year 1949, total amount paid. A. $13.18.

Cross Examination by Mr. Fennelly:

Q. Did Mrs. Costello order the amount in 1949 of $13.18, whatever it was? A. It was merchandise for the Costello household in Sands Point. I couldn't tell you who.

Q. Who ordered it? A. I couldn't tell you, sir.

Q. You never saw Mr. Costello in your store, did you? A. Mr.?

Q. Yes. A. Not that I recall.

Q. You have seen Mrs.? A. Yes, I have.

Q. And didn't Mrs. pay you? A. On that purchase?

Q. Yes. A. I couldn't tell you. We received payment on it; I couldn't tell you how it was received, sir.

Q. You never testified before the grand jury, did you, that returned the indictment in this case? A. No, sir.

Mr. Pierpoint: May I substitute a photostat, your Honor?

The Court: You may.

Mr. Pierpoint: Thank you, Mr. Alper.

(Witness excused.)

(986) Mr. Pierpoint: Does the Court desire to take the recess at this time?

The Court: Yes, that is a good idea.

(Recess.)

(Jury present.)

Mr. Pierpoint: The Government calls James L. Gillis.

JAMES L. GILLIS, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. Gillis, will you keep your voice up so that the jurors can all hear you? What is your business, Mr. Gillis? A. Gas and electric utilities.

Q. What company are you with? A. Long Island Lighting, Mineola.

Q. What position do you hold with that company? A. Supervisor of customer accounting.

Q. Have you brought with you ledger stubs? A. I have.

Q. Showing amounts paid to your company by Loretta B. Costello in the years 1947, 1948 and 1949? A. I have, sir.

(Marked Government's Exhibits 251, 251-A and (987) 251-B for identification.)

Q. Mr. Gillis, I show you Government's Exhibits 251, 251-A and 251-B for identification and I will ask you if these are ledger stubs showing amounts paid for electricity, account of Loretta B. Costello, for the property on Barkerspoint Road in Sands Point. A. They are the original records.

Q. Are these records kept by your company in the regular course of business? A. They are.

Q. And is it the regular course of your company's business to keep these records? A. That is correct.

Mr. Pierpoint: The Government offers 251, 251-A and 251-B for identification in evidence.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Overruled.

(Marked Government's Exhibits 251, 251-A and 251-B in evidence.)

Q. Mr. Gillis, I show you Government's Exhibits 251, 251-A and 251-B, each one of which has an adding machine tape attached to it. That adding machine tape totals the payments for the year, is that correct? A. That is right.

Q. Will you read the total payments for the year 1947? A. $138.97.

(988) The Court: Is that 251?

The Witness: That is 1947.

Mr. Pierpoint: That is Government's Exhibit 251.

The Court: And the payments are what?

The Witness: $138.97.

Q. Government's Exhibit 251-A, which is the year 1948. A. $126.66.

Q. And Government's Exhibit 251-B, which is the payments in the year 1949. A. $184.02.

Q. Mr. Gillis, can you state whether or not the Long Island Lighting Company served the premises at 5 Barkerspoint Road with electricity prior to the year 1947. A. Yes.

Q. How far back would that go that you served them with electricity? A. Well, I haven't the records available, but I would say since the premises were built.

Q. However, you have no records of the payments? A. No.

Q. Behind 1947? A. No. They are destroyed six years—after six years.

Q. So that if the Costellos occupied this house prior to 1947 they would have paid electrical bills but you don't know what they were? A. Yes.

Mr. Pierpoint: No further questions.

(989) *Cross-Examination by Mr. Fennelly:*

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Mr. Fennelly: That is all.

Mr. Pierpoint: May I substitute photostats, your Honor?

The Court: You may.

Mr. Pierpoint: Thank you, Mr. Gillis.

(Witness excused.)

Mr. Pierpoint: The Government calls Mr. Joseph Dell.

Joseph C. Dell—for Government—Direct

JOSEPH C. DELL, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. Dell, will you keep your voice up so the last juror in the box can hear you? A. Yes.

Q. What is your business? A. I am in the electrical contracting business and lighting fixture business, and also sell electrical appliances.

Q. What is the name of your company? A. Dell Lighting Fixture Company.

Q. Are you familiar, Mr. Dell, with the books and records maintained by your company to show accounts with (990) purchasers? A. Yes, sir.

Q. Have you brought with you a ledger sheet showing the account of Frank Costello of 5 Barkerspoint Road in Sands Point? A. Yes.

Q. May I have it? A. (Witness hands.)

(Marked Government's Exhibit 252 for identification.)

Q. Mr. Dell, I show you Government's Exhibit 252 for identification and ask you if this is a ledger sheet for the account of Frank Costello in the year 1947—pardon me—the years 1944 through 1949 showing the amounts of payments? A. That is correct.

Q. Is this a record maintained by your company in the regular course of its business? A. Yes.

Q. And is it the regular course of your company's business to keep this record? A. Yes.

Mr. Pierpoint: The Government offers 252 for identification.

Joseph C. Dell—for Government—Cross

Mr. Fennelly: No objection.

(Government's Exhibit 252 for identification received in evidence.)

Q. Mr. Dell, I show you Government's Exhibit 252 in evidence and ask you if from this record you have computed the amount paid on this account in the year 1944. A. $84.60.

Q. $84.60? A. $84.60.

(991) Q. And the year 1946? A. $552.25.

Q. And the year 1947? A. $217.80.

Q. And the year 1949? A. $4.

The Court: What were the last two years? '48 and '49.

Mr. Pierpoint: 1947 and 1949, your Honor.

No further questions.

The Court: Any questions, Mr. Fennelly?

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. What is that, sir? I can't—

Q. Did you testify before the grand jury that returned the indictment in this case? A. Did I testify? No, it is the first time I have been here.

Mr. Fennelly: That is all.

Mr. Pierpoint: May I substitute a photostat, your Honor?

The Court: Oh, yes.

Mr. Pierpoint. Thank you, Mr. Dell.

(Witness excused.)

Phyllis Huestis—for Government—Direct

Mr. Pierpoint: The Government calls Mrs. Phyllis Huestis.

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(992) PHYLLIS HUESTIS, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Miss Huestis, will you keep your voice up so that the last juror can hear you? A. Yes.

Q. Where are you employed, Mrs. Huestis? A. Doctors Hospital.

Q. In what office in Doctors Hospital? A. Admitting Office.

Q. Are you familiar with the records maintained by the admitting office of Doctors Hospital? A. Yes.

Q. Does the admitting office maintain card records for each patient admitted? A. Yes.

Q. And have you brought with you a record showing the admission of Frank Costello of 115 Central Park West? A. Yes.

Q. May I have it, please? A. (Witness hands.)

(Marked Government's Exhibit 253 for identification.)

Q. Mrs. Huestis, I show you Government's Exhibit 253 for identification. You said this is a card record maintained by your office showing the admission of patients; is that correct? A. That is correct.

Q. And does it show the room rate? A. Yes.

(993) Q. And does it show the nursing charge? A. Floor nursing.

Q. And does it show the date of admission? A. Yes.
Q. Does it show the date of discharge? A. Yes.

Mr. Pierpoint: The Government offers Exhibit 253 for identification.

Mr. Fennelly: No objection.

(Government's Exhibit 253 for identification received in evidence.)

Q. Now, Mrs. Huestis, I show you Government's Exhibit 253 in evidence. You say that it shows the date of admission and date of discharge. Would you read the date of admission? A. January 10, 1939.

Q. And the date of discharge of the patient? A. January 16, 1939.

Q. What was the name of the doctor? A. Douglas Quick.

Q. Now, the date of admission and date of discharge shows that the patient was there for six days; is that correct? A. That is correct.

Q. Are you familiar with the policy of the hospital in respect of room charges, that is to say, is the patient charged for the date of admission? A. Yes, the patient is charged for the date of (994) admission.

Q. Is the patient charged for the date of discharge? A. Not if they leave the hospital at 11 a.m., the check-out hour.

Q. So that this record shows one stay in the hospital of six days minimum? A. Right.

Q. And six days' stay, the room rate of $16 would be how much? Would it be $96? A. Yes.

Q. I notice a charge of $3 for floor nursing here. Is that $3 per day? A. That is right.

Q. And if the patient has private nursing is that charge made? A. No.

Q. But is the charge for private nursing more than the charge for floor nursing? A. Yes.

Q. So that the minimum charge would be $3 per day for six days? A. That is right.

Q. And that is a total of $18 for nursing as a minimum. A. Yes.

Q. Which makes, $18 and $96, makes a total I believe of $114; is that correct? A. That is right.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. I beg your pardon?

(995) Q. Did you testify before the grand jury that returned the indictment in this case? A. No.

Q. Now, I notice on the back of the card under "Service" the letters s-u-r-g. I take it that was surgery. A. Correct.

Q. And that was surgery on the larynx, wasn't it? A. I have no knowledge of that.

Q. Is Dr. Quick a specialist? A. He is a surgeon.

Mr. Fennelly: That is all.

Mr. Pierpoint: May I substitute a photostat, your Honor?

The Court: Yes.

Mr. Pierpoint: Thank you, Mrs. Huestis.

The Government calls Wallace Germaine.

Mr. Fennelly. Excuse me. I am not sure we had the year on that.

Mr. Pierpoint: It was 1939.

The Court: 1939. Admitted January 10, 1939, and discharged January 16th.

(Witness excused.)

WALLACE GERMAINE, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

(996) Q. Mr. Germaine, will you keep your voice up so that the last juror in the box can hear you? A. Sure.

Q. By whom are you employed, Mr. Germaine? A. By the Liberty Music Shops.

Q. What is your position there? A. Sales manager.

Q. In your position as sales manager, are you familiar with the records maintained by the Liberty Music Shops to reflect accounts with customers and the amounts paid on those accounts? A. Yes, sir.

Q. Have you brought with you three delivery receipts on the account of Mrs. L. B. Costello and Mrs. Frank Costello of 115 Central Park West? A. Yes, I have.

Q. May I have them, please? A. (Witness hands.)

(Marked Government's Exhibit 254, 254-A and 254-B for identification.)

Q. Now, I show you Government's Exhibits 254, 254-A and 254-B for identification. Are these delivery receipts showing deliveries to customers and the amounts paid for the merchandise bought? A. Yes, sir.

Q. And are they records kept by your company in the regular course of business? A. Yes, sir.

Q. And is it the regular course of your company's business to keep these records? A. Yes, sir.

Mr. Pierpoint: The Government offers 254-A and B (997) only, your Honor.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled. You are offering only A and B?

Mr. Pierpoint: Your Honor, the reason I do that is that Government's Exhibit 254 is an article that was purchased and then returned. The payment actually is reflected by—

The Court: I am only trying to find out. You are not offering 254; you are offering only 254-A and 254-B.

Mr. Pierpoint: That is correct.

The Court: All right.

(Government's Exhibits 254-A and 254-B for identification received in evidence.)

Q. Now, Mr. Germaine, I show you Government's Exhibit 254-B and—pardon me, Government's Exhibit 254-A; this is a delivery receipt for merchandise delivered to Mrs. L. B. Costello, 115 Central Park West, is that correct? A. That is right.

Q. And what was the amount, what was the cost of the merchandise delivered on this receipt?

The Court: What was the merchandise?

(998) Q. What was the merchandise? A. The merchandise was a television set.

Q. And what was the cost of the merchandise delivered on that receipt? A. $1,011.30.

Q. And how was it paid? A. This was previously paid for by a purchase before this.

The Court: Will you keep your voice up, Mr. Germaine? I can't hear you and I am sure the jury can't.

A. It was previously paid for by an item bought before this.

Q. And that item is reflected on Government's Exhibit 254 for identification, is that correct? A. That is right.

Q. So that upon the purchase of the item shown on Government's Exhibit 254-A there was a credit due Mrs. Costello; is that correct? A. That is correct.

Q. Do you know whether or not that credit was ever actually paid to her? A. No, sir, I don't.

Q. Does your company maintain records that would show whether that money was actually paid to her? A. Yes, sir, we do.

Q. And have you been able to find the record that would reflect that? A. No, sir, we haven't.

Q. And you have searched for it, however? A. Yes.

(999) Q. So that Government's Exhibit 254-A in evidence—what was the date of that purchase, by the way, Mr. Germaine? A. July 21, 1948.

Q. And the purchase was in the amount of $1,011.30, is that correct? A. That is correct.

Q. I show you Government's Exhibit 254-B and ask you what was delivered on that delivery receipt? A. That was a radio phonograph.

Q. What was the charge for it? A. $550.29.

Q. And when were those amounts paid? A. On March 26, 1949.

Q. And the balance was paid? A. On March 14, 1949.

Q. That is April, is it not, Mr. Germaine? A. Excuse me. April, yes.

The Court: Let me see 254-A.

(Exhibit handed to the Court.)

Q. That last payment was April, 1949, was it not, Mr. Germaine? A. That is right.

Wallace Germaine—for Government—Cross
Edward L. Hendel—for Government—Direct

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Mr. Pierpoint: I am informed that we are not quite clear on these total payments yet, your Honor.

By Mr. Pierpoint:

(1000) Q. I show you Government's Exhibit 254-A in evidence. What was the total net amount paid for the television set shown on Government's Exhibit 254-A? A. 1,011.30.

Q. That was paid in the year 1948, is that correct? A. That is right.

Mr. Pierpoint: May I substitute photostats, your Honor?

The Court: You may.

Mr. Pierpoint: Thank you, Mr. Germaine.

(Witness excused.)

Mr. Pierpoint: The Government calls Edward Hendel.

EDWARD L. HENDEL, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. Hendel, would you keep your voice up so that the last juror in the box can hear you, please?

By whom are you employed, Mr. Hendel? A. Owners and Tenants Electric Company, Inc.

Q. What position do you hold there? A. I am secretary and treasurer.

Q. What is the business of Owners and Tenants (1001) Electric Company? A. Electric submetering. We render monthly bills for electricity consumed based on monthly meter readings.

Q. Have you at one time served the building at 115 Central Park West? A. Yes, sir, we have.

Q. Have you brought certain ledger cards showing the amounts paid for the account of Frank Costello for electrical service? A. Yes, sir, I have them.

Q. May I have them, please? A. (Handing).

(Marked Government's Exhibit 255 for identification.)

Q. Mr. Hendel, I show you Government's Exhibit 255 for identification and ask you if this is a series of ledger sheets which shows the amounts paid for electricity for the apartment 18 in 215 Central Park West, account of F. Costello, for the years 1944 through 1949. A. Yes, sir, it is.

Q. Is this a record kept by your company in the regular course of business? A. Yes, sir, it is.

Q. And is it the regular course of your company's business to keep this record? A. It is.

Mr. Pierpoint: Government offers 255 for identification.

Mr. Fennelly: No objection.

(Marked Government's Exhibit 255 in evidence.)

Edward L. Hendel—for Government—Cross

(1002) Q. From Government's Exhibit 255 in evidence, Mr. Hendel, have you made computations showing the amounts paid each year from 1944 through 1949 on this account? A. Yes, sir, I have.

The Court: '44? I thought you said '34.
Mr. Pierpoint: '44.
The Court: '44.

Q. And will you read the total amount paid during the year 1944? A. $90.62.

Q. And the total amount paid during the year 1945? A. $96.03.

Q. And the total amount paid during the year 1946? A. We received $106.56 but we returned $1.75 in interest refund, leaving a net of $104.81.

Q. In the year 1947? A. $115.10.

Q. The year 1948? A. $138.76.

Q. And in the year 1949? A. $132.67.

Mr. Pierpoint: I have no further questions.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir, I did not.

Mr. Pierpoint: May I substitute a photostat, your Honor?

(1003) The Court: You may.

Mr. Pierpoint: Thank you, Mr. Hendel.

(Witness excused.)

The Court: That will do for today, I think.

Mr. Pierpoint: That is all I have, your Honor.

The Court: That makes us come out even.

Mr. MacMahon: Your Honor, we have a brief legal matter we would like to take up with the Court, about five minutes.

The Court: We can do that inside.

Mr. MacMahon: I agree.

The Court: At 10:30 tomorrow morning we will take on again, but we will adjourn now. Remember the instructions I have been giving you. Keep your minds completely open and don't talk about the case.

(Jury retires.)

(The following occurred in the robing room:).

The Court: What is the problem?

Mr. MacMahon: It has to do with some interrogatories that Mr. Fennelly requested, and concerning which he obtained an order from Judge Goddard. Mr. Seymour is fully conversant with the facts about that, and I will let him take over.

Mr. Seymour: Your Honor, we wanted to advise you about proceedings that had taken place outside of (1004) court but which were called to your Honor's attention, I believe, on the first day of trial by Mr. Fennelly.

You will recall that Mr. Fennelly had made a motion before Judge Goddard for an order to take interrogatories of Frank Erickson—

The Court: Oh, yes.

Mr. Seymour: —as a witness.

The Court: That is right.

Mr. Seymour: And on April 5th Mr. Fennelly mentioned to the Court the fact that he wanted to have an order consented to, and that order subse-

quently was consented to and was entered, I believe, on April 7th.

The order provided that the Government's cross-interrogatories be served by April 8th, redirect interrogatories by the 9th at noon, and that they be sent out to the person assigned to administer the oath and propound the interrogatories within 24 hours by the clerk.

The Court: Where is Erickson in jail?

Mr. Delaney: He is in Milan, Michigan, Correctional Institution.

Mr. MacMahon: We are informed differently, but that will come out in just a minute.

The Court: Yes.

Mr. Seymour: Actually, the Government was an (1005) hour late in serving its cross-interrogatories, I believe, on April 8th, served them at 1 p.m., at 12 being otherwise engaged, as your Honor knows.

On April 13th our office received through the mail an affidavit of service from Mr. Delaney's office. It was the first we had heard that the interrogatories had not been sent out by the clerk as provided in the order.

Mr. Delaney: That is because the clerk refused, your Honor. He brought them up to me.

The Court: One at a time. Let me get the story straight and then you may reply.

Mr. Seymour: We have just been advised today that the interrogatories and the commission have been returned by the warden of Milan, one of the persons authorized to propound the interrogatories. With the return is a letter which I believe is in the regular court file. It was addressed to the clerk. I have a copy of it here, but it explains the entire circumstances.

Apparently Mr. Delaney's mailing progressed fairly slowly out to Michigan and in the interim Mr. Delaney wired Mr. Erickson, also his client, and instructed him not to answer any interrogatories until he had conferred with an attorney, Louis Herman.

Apparently Louis Herman had been at Milan on (1006) April 13th when the interrogatories were still en route, the day following, however, their mailing by Mr. Delaney's office.

At that time, we are advised, he applied for permission to speak to Erickson. The prison officials had no record of his being an attorney for Erickson and instructed him to apply to the bureau in Washington.

I gathered he made such an application but at the same time turned and went back to the airport and came back to New York.

In any event, permission was granted to Counselor Herman to interview Erickson on the 16th and 17th of April, and the warden's letter indicates that Herman advised him that he could not get out there until the 19th.

Meanwhile, on the 18th Erickson was removed from Milan on a writ which we are informed issued out of the District Court in New Jersey.

Therefore, your Honor, the interrogatories are back in this court now. They haven't been propounded.

We wanted to make sure the record was clear that the cause of any interference with the defendant's right to the testimony of this witness was not from our office.

The Court: Mr. Delaney?

(1007) Mr. Connelly: Who brought him to New

Mr. MacMahon: The United States Attorney in New Jersey, I assume.

Mr. Fennelly: But the Government did?

Mr. MacMahon: The Government.

Mr. Delaney: Mr. Herman advised me on Saturday, the 17th of April, that he had telephoned the warden's office at the Federal Correctional Institution, Milan, Michigan, on that morning, Saturday morning, and had spoken to, I believe, either a deputy or assistant warden there, who advised him that he had better not come out the following Monday, April 19th, because he wasn't certain whether or not Mr. Erickson would be there on that date.

Mr. Herman also advised me that he canceled airplane reservations for Monday, April 19th, because of that advice.

And on April 19th I sent a telegram to Mr. Erickson, advising him; in substance, to answer no interrogatories, written or oral, until he had a chance to confer with his tax attorney, Louis Herman, who has been his tax attorney for the past eight or nine or more years.

Mr. Seymour: I believe Mr. Delaney's dates (1008) are a week off.

Mr. Delaney: No, not on those dates.

Mr. Seymour: This was a later telegram?

Mr. Delaney: Yes, a subsequent telegram, when we found he wouldn't be there.

Mr. Seymour: That is the first we have heard of it.

Well, your Honor, we just wanted to make the record clear so that the defendant's rights were fully protected.

The Court: Or, if they weren't, that you weren't responsible for it.

Mr. Seymour: That is right.

Mr. Delaney: Do you know whether he is back in Milan now?

Mr. MacMahon: I don't.

Mr. Fennelly: Where is he now?

Mr. MacMahon: I don't know. We don't know. I have been trying to reach the United States Attorney's office in New Jersey, and we haven't been successful with the man who is handling the investigation into some affairs over there in New Jersey in which Erickson is allegedly involved.

Mr. Delaney: As a witness?

Mr. MacMahon: As a witness or otherwise, I (1009) don't know, but we haven't been successful. And I might add that he, of course, is available to the defendant on a writ of habeas corpus ad testificandum.

The Court: That completes the making of the record?

Mr. Delaney: I believe I might just add this, your Honor, that, I don't remember the exact date, but I believe it was on Monday afternoon—I received the interrogatories and cross-interrogatories from the clerk late Friday afternoon, and he advised me, the clerk, in substance, that even though the order called for his sending it, that wasn't one of his duties and for me to send it. It was the following Monday on which it was mailed, and I then received a return receipt which I had requested.

I believe that return receipt is dated that it was received on either the 15th or 16th of April. I am not certain.

Mr. Seymour: The point of that, really, is that the 24-hour period—the additional 48 hours, or 24 hours I assume it was—I believe it was, yes—actually was enough to prevent the interrogatories from being taken, apparently.

Mr. Delaney: Not letting Mr. Herman consult with his client, I think, is the thing that frustrated it.

(1010) Mr. Fennelly: I know Mr. Delaney told me the clerk wouldn't send them out. He said, regardless of the order the party does it, because they weren't provided with—

The Court: Funds—

Mr. Fennelly: —to send them out. It's the attorney's job and not his.

Mr. MacMahon: Your Honor, there is one further matter. Yesterday at one o'clock in court, at the close of the morning session, counsel for the defendant served on us a notice to produce, which has four items in it, all of which are very comprehensive, your Honor. For example, the first one calls for all reports of agents or employees of the Bureau of Internal Revenue pertaining to taxes of Frank Costello for the years 1926 through 1949.

The next one calls for all notices of assessment of tax by the Bureau of Internal Revenue on Frank and Loretta Costello for the years 1926 through 1949. The third, tax waivers, filed with the Bureau of Internal Revenue by Frank Costello or Loretta Costello for the years 1940 through 1949. The fourth item, all documents, papers, records, correspondence in your possession or control in any way relating to the above cause, that is, United States of America against Frank Costello.

(1011) I assume from this that the purpose is to

lay a foundation for secondary evidence. Is that correct, Mr. Fennelly?

Mr. Fennelly: I would think so. That is what a notice to produce is usually served for.

Mr. MacMahon: I just wanted to state on the record that we certainly weren't going to get into this kind of a fishing expedition.

The Court: Anything else now?

(Adjourned to Friday, April 23, 1954 at 10.30 o'clock a.m.)

(1012) New York, April 23, 1954;
10.30 o'clock a.m.

Trial continued.

(Jury in box.)

The Clerk: If there are any witnesses present in the courtroom at this time will they please retire to the witness room.

Mr. Pierpoint: The Government calls Mr. T. D. Ellis, Jr.

T. D. Ellis, Jr., called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. Ellis, what is your profession? A. Attorney at law.

Q. Where do you practice? A. In Florida, mostly Hollywood, Florida, Broward County.

Q. You live in Hollywood, do you, sir? A. Yes, sir.

Q. Are you a member of a firm in Hollywood? (1013) A. Ellis & Spencer.

(Marked Government's Exhibit 256 for identification.)

Q. Mr. Ellis, I show you Government's Exhibit 256 for identification and ask you if you can tell me what it is? A. That is a warranty deed executed by Edward Moulin and Norma Moulin, as husband and wife, to Dudley Geigerman or Geigerman, and Ann Geigerman or Geigerman as as husband and wife, conveying Lots 2 and 3, Block 4 of Hollywood Beach, second addition, subdivision in Hollywood, Florida.

Q. That is a certified copy of the deed, is that correct, sir? A. This is an authenticated copy, exemplified copy.

Q. Did you represent the sellers in that transaction, sir? A. Yes, sir.

Mr. Pierpoint: The Government offers 256 for identification.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: I will sustain the objection at this time, but you may—

Mr. Pierpoint: Your Honor, may I offer it subject to connection?

The Court: No, you may make the connection if (1014) you wish, lay the foundation, but as it is now I see no relevance to it at all.

Mr. Pierpoint: Your Honor, I would like to have the witness, who was the attorney for the sellers, refer to the deed. We are offering Mr. Ellis out of

order because he comes from Florida and would like to get back.

The Court: He has identified what it is, and whatever else you want to get from him you may examine him about it, but I will not receive it at the present time.

Q. Mr. Ellis, you said that you represented the sellers in this transaction, is that correct? A. Yes, sir.

Q. What was the total purchase price for the property? A. Twenty thousand.

Q. And do you recall how much was paid at the closing? A. I can look at my file and tell.

The Court: You may do so.

Mr. Pierpoint: I have a document here which I will mark, your Honor.

(Marked Government's Exhibit 256-A for identification.)

Q. Mr. Ellis, I show you Government's Exhibit 256-A for identification and ask you if you can tell me what (1015) that is? A. This is a closing statement of the transaction as to the sale of that property by the Moulin to the Geigermans.

Q. And it accurately reflects the transaction, is that correct? A. Yes, sir. It shows the sale price of twenty thousand and it shows—

The Court: You had better not read from it, sir.

Q. Does it refresh your recollection?

The Court: It shows the sale price and shows certain other items which were taken into consid

eration on the sale and the amount that was due at the time of the closing.

The Witness: That is exactly correct, sir.

The Court: Very well.

Q. Does this document refresh your recollection as to the amount paid at the closing? A. Yes, sir.

Q. And with your recollection so refreshed, what was the amount paid at the closing? A. It was—

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: I will allow it.

A. $18,166.56 was the net amount after the deposit.

Q. But the total sales price was twenty thousand, is that correct? A. That is correct.

(1016) Q. And in what form was the amount paid at the closing? A. It was paid to me by a check of the purchaser's attorney, Stanley M. Beckerman.

Q. And he is an attorney practicing in Hollywood, sir? A. Yes, sir.

Mr. Pierpoint: I ask to have this marked with a separate number.

The Court: What is it? Just a minute. Let me see the paper. Has it to do with this transaction?

Mr. Pierpoint: Yes, sir, it does.

The Court: Keep it in the 256. Make it 256-B.

(Marked Government's Exhibit 256-B for identification.)

(Paper handed to the Court.)

T. B. Ellis, Jr.—for Government—Direct

Mr. Pierpoint: Government offers 256-B for identification.

The Court: (To the witness) Would you let me see that sheet of paper, 256?

(Witness hands paper to the Court.)

The Court: Thank you.

(1017) Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: This is a quit-claim deed to the same piece of property?

Mr. Pierpoint: Yes, your Honor, executed less than two weeks after Government's Exhibit 256 for identification.

The Court: If you desire—you have offered it, have you?

Mr. Pierpoint: Yes, your Honor.

The Court: I will sustain the objection at the present time. That is along with the other one.

Mr. Pierpoint: Your Honor—

The Court: You may reoffer it later.

Mr. Peirpoint: May I be heard on it at this time, your Honor?

The Court: You may.

Mr. Pierpoint: This is a quit-claim deed, the date of which is less than two weeks after the date of Government's Exhibit 256 and it bears one 10-cent Florida tax stamp and no Federal tax stamps. I submit, your Honor, that that makes this deed relevant and also makes Government's Exhibit 256 for identification relevant.

The Court: I don't follow you at all.

(1018) Mr. Pierpoint: Well, your Honor—

The Court: There has been absolutely no show-

ing at all of any connection between these papers and the defendant.

Mr. Pierpoint: This deed, Government's Exhibit 256 for identification—

The Court: You don't have to describe what it is. I have read it.

I am correct, am I not, that there is no mention anywhere of this defendant in the deed or in anything that you have gotten in here?

Mr. Pierpoint: May I approach the bench?

The Court: You may.

Mr. Fennelly: May I come, too?

The Court: Yes, we are waiting for you.

You don't get up as quickly as you used to.

(Side bar discussion between Court and counsel out of hearing of the jury not reported.)

The Court: Will the reporter come up here?

(Further side bar discussion as follows:)

The Court: I say to you, Mr. MacMahon, that the inference which you say is so plain is not plain to me. That may be my fault. The state of the record is that you have offered both of these documents and I (1019) have sustained objections to them reserving to you, however, the right to re-offer them or to ask me to reconsider the rulings, after I have had a chance to consider it more, or if you wish to lay any further foundation.

These two exhibits, 256, 256-B in my opinion, as they stand, tend to prove nothing with respect to the charge for which this defendant is now on trial. I may be wrong about that, but I am willing to give it some thought but, as of now, I will not admit them.

However, Mr. Pierpoint indicates that he desires to question the witness to some extent with respect to the provisions of the Florida law in so far as that were applied to 256-B.

Mr. Pierpoint: No, 256.

The Court: 256. And I will permit him to do so.

Mr. Pierpoint: I will also offer some further documents.

The Court: You may.

(End of side bar discussion.)

By Mr. Pierpoint:

Q. Mr. Ellis, you have said that you are an attorney practicing in Florida, is that correct, sir? A. Yes.

Q. You are a member of the Bar of the State of (1020) Florida? A. Yes, sir.

Q. You have had experience in real estate matters, is that correct, sir? A. Yes, sir.

Q. Can you tell me, Mr. Ellis, whether or not it is a requirement—

The Court: No. Pardon me just a minute.

And are you familiar with the provisions of the law of the State of Florida with respect to the form of conveyances of real estate?

The Witness: Yes, sir.

The Court: Very well.

Q. Can you state, Mr. Ellis, whether or not the law of Florida requires that the name of the purchaser or grantee of a deed that the address of the purchaser or grantee of a deed be shown on the deed? A. The law of Florida requires that the post office address of the grantee or grantees of a deed appear in the deed and impresses

the duty upon the Clerk of the Court where such instruments are recorded to see that it is done. That is Florida Statute Section 695.21, adopted in 1945.

Mr. Pierpoint: Thank you, Mr. Ellis.

The Court: Florida statutes?

The Witness: Florida Statutes, Section 695.21. That was adopted, if the Court please, by the Legislature (1921) of Florida in 1945.

The Court: Thank you.

The Witness: I have the chapter number, if you want that also.

The Court: Will you let us have that, please? You mean the chapter of the session laws of that year?

The Witness: Yes.

The Court: Please let me have it.

Mr. Pierpoint: I have it here.

The Witness: It is Chapter 23114, Laws of Florida of 1945.

The Court: Thank you.

Mr. Pierpoint: I have no further questions at this time, your Honor.

Cross Examination by Mr. Fennelly:

Q. Mr. Ellis, did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Mr. Fennelly: That is all.

Mr. Pierpoint: I have no further questions of Mr. Ellis.

(Marked Government's Exhibit 257 for identification.)

T. B. Ellis, Jr.—for Government—Cross

The Witness: May I inquire of Court and counsel if I am excused?

(1022) The Court: Yes, you are.

(Witness excused.)

(Marked Government's Exhibits 257-B through 257-E for identification.)

The Court: Where is 257-A, or is there one?

The Clerk: Oh, I omitted A.

The Court: That is all right; after 257 the next one is 257-B.

Mr. Pierpoint: The Government offers 257 for identification, 257-B, 257-C, 257-D and 257-E.

The Court: Would you let me see that series 256, please?

(Mr. Pierpoint hands exhibits to the Court.)

The Court: Let me see 256-B, just B.

(Mr. Pierpoint hands exhibit to the Court.)

Mr. Fennelly: I object to Exhibits 257 and 257-B on the ground that they are transactions in 1950 after the years involved in this indictment.

The Court: What is the date of 256 and 256-B?

Mr. Pierpoint: The date of 256, your Honor, is the 29th day of April 1948. The date of 256-B is the 14th day of May 1948.

The Court: Both in 1948?

Mr. Pierpoint: Yes, your Honor.

The Court: Suppose you come up to the bench.

(1023) (The following proceedings took place at the bench out of hearing of the jury:)

The Court: The relevance of 256 and 256-B seems to me now to be established by the Exhibits 257 and 257-B, all for identification. As Mr. Fennelly points out, the latter exhibits, which are deeds, show transactions which occurred in 1950.

Mr. Pierpoint: Your Honor, they show the property was held until beyond the prosecution years and it was not cash, it was not an available source of funds to the defendant during the prosecution years.

The Court: I see. Very well. All right.

Mr. Fennelly: I have nothing to say, except there still has been no proof as to the payment by Mrs. Costello of any money.

The Court: That is true, there isn't any of that proof, but there are bases here for inferences. In any event, I think that they are admissible.

Mr. Pierpoint: And as to the certificates of no gift tax returns—

The Court: Oh, yes. They haven't been offered.

Mr. Pierpoint: Yes.

Mr. Fennelly: I have made no objection to them.

(The following proceedings in open court.)

The Court: Exhibits 256 and 256-B, 257, 257-B, (1024) 257-C, 257-D, 257-E are all received in evidence.

The Clerk: Just for the record, 256, 256-A and B—

The Court: Not A, B.

The Clerk: Just B. 256-B for identification, 257 through 257-E for identification received in evidence.

The Court: Yes, that is correct.

The Clerk: Thank you.

Colloquy

The Court: I suggest that you can save time by just saying that this is a warranty deed or quit-claim deed, something like that, and who the parties are, and so on.

Mr. Pierpoint: Ladies and gentlemen, this is a warranty deed—

The Court: Which exhibit?

Mr. Pierpoint: Government's Exhibit 256 in evidence is a warranty deed covering two lots in Hollywood, Florida. The sellers were Edward and Norma Noulin; the purchasers were Dudley Geigerman and Ann Geigerman. The address of the purchasers on the deed is shown as 3917 Piedmont Drive, New Orleans, Louisiana. That address is Xd out and the address is shown as 115 Central Park West, New York, New York. The deed bears $22 in Federal tax stamps and $20 in Florida revenue stamps. The date of the deed is the 29th day (1025) of April 1948.

Government's Exhibit 256-B in evidence is dated the 14th of May 1948. It is a quit-claim deed from Dudley Geigerman and Ann Geigerman now residing in New Orleans, Louisiana to Loretta B. Costello. It bears one 10-cent Florida tax stamp and no Federal tax stamp. It was signed by Dudley Geigerman and Ann Geigerman before a Florida notary—pardon me, before a New Orleans, Louisiana, notary.

Government's Exhibit 257 in evidence is a warranty deed from Dudley and Ann Geigerman, still living in New Orleans, to Loretta B. Costello. It is dated the 24th of January 1950. It bears, again, one 10-cent Florida tax stamp and no Federal tax stamp. And this deed was, again, executed by the Geigermans before a New Orleans notary.

Government's Exhibit 257-B—

Mr. Fennelly: Excuse me. Just a minute. I wonder if that Florida lawyer is still here? It would be a matter of Florida law of—

The Court: I don't know.

Mr. Fennelly: To question him about it. I think it would save time.

Mr. Pierpoint: I have no idea whether he is still here or not. The last I heard, when he left (1026) today he was going to Washington.

Government's Exhibit 257-B in evidence is a warranty deed from Loretta B. Costello and Frank Costello, her husband, to the Pennery Corporation, a Florida corporation. It is dated 25 day of January 1950 and was recorded on February 9, 1950. It bears a large quantity of Federal and Florida tax stamps.

Government's Exhibits 257-C, D and E in evidence are certificates from the District Director of Internal Revenue in New York, in New Orleans and in Jacksonville, Florida, that there is no record of any gift tax return for Dudley or Ann Geigerman.

The Court: In what years?

Mr. Pierpoint: From the year 1946 through 1950 for the New York district; for the years 1937 through 1950 for the Florida district; and for the years 1946 through 1950 for the New Orleans district.

The Court: All right. Next witness.

Mr. Christy: The Government calls Elmer Jensen.

Elmer W. Jensen—for Government—Direct

(1027) ELMER W. JENSEN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Jensen, where do you live? A. 316 Kindermack Road, Oradell, New Jersey.

Q. Where are you employed, sir? A. Brown, Harris & Stevens; Incorporated.

Q. How long have you been with Brown, Harris? A. Over 32 years.

Q. Are you assistant manager? A. Assistant secretary.

Q. Assistant secretary? A. Yes.

Q. What business is Brown, Harris & Stevens in, sir? A. Real estate and insurance.

Q. Do you manage various apartment buildings in New York? A. We do.

Q. Did Brown, Harris at one time manage the apartment building at 115 Central Park West? A. They did.

Q. Were Frank and Loretta Costello tenants of that building? A. They were.

Q. Do you remember when Brown, Harris first became the agents for that building? A. In 1935.

Q. Do you remember when they ceased managing the (1028) building? A. The end of February 1949.

Q. Have you brought with you certain records relating to the rental of an apartment to— A. I have brought records of leases (handing papers to Mr. Christy).

Mr. Christy: I ask to have these marked for identification.

(Marked Government's Exhibit 258 for identification.)

Mr. Christy: May the record indicate that there are four cards in Government's Exhibit 258 for identification?

Q. Mr. Jensen, I show you Government's Exhibit 258 for identification and ask you if those are the lease records pertaining to the rental of apartment 18-F in 115 Central Park West to Frank Costello? A. They are.

Q. For what period do they run? A. From July 1, 1937 through October 1, '44, and then they were monthly after that, '47, '48 and '49.

The Court: All right, we will take our recess now.

(Jury retires.)

(Short recess.)

(1029) Q. Mr. Jensen, I show you Government's Exhibit 258 for identification and ask you, on the fourth card that shows the date September 1—October 1, 1944, and there is a notation "Monthly." A. That is when the tenant was put on a month-to-month basis; they didn't have a straight lease.

Q. It was month to month until you relinquished the operation of the building, is that correct? A. That is right, February '49.

Q. These are the records that you keep for each tenant, is that correct? A. That is right.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 258 for identification in evidence.

Mr. Fennelly: No objection.

(Government's Exhibit 258 for identification received in evidence.)

Q. Mr. Jensen, does Brown, Harris also keep a ledger book in which the payment of rent is recorded? A. They do.

Q. Did they keep that for the period 1949—1942 through 1949? They did, sir? A. Yes, these are the statements.

Mr. Christy: May I mark these as one exhibit, your Honor?

(1033) The Court: 258-A, four books.

(Marked Government's Exhibit 258-A for identification.)

Q. Mr. Jensen, are the four books in Government's Exhibit 258-A record books in which the payment of rent is recorded? A. These are copies of statements rendered to the owner of 115 Central Park West showing rent collected from tenants.

Q. From the years 1942— A. '42 through February 1949.

Q. At which time you relinquished the management of the building? A. That is right.

Q. Referring to Government's Exhibit 258 in evidence, does that indicate that there was one payment to Frank Costello? A. Was there what?

Q. A payment to him? A. Yes, in November 1937, in the amount of $290.

The Court: '37?

The Witness: 1937.

Q. November 16, is that correct, Mr. Jensen? A. That is right.